

**STATE BOARD OF EQUALIZATION**

(916) 445-2641

July 5, 1979

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Dear Mr.:

This is in reply to your letter of June 7, 1979 concerning cultured marble products. On May 16, 1979, you met with members of the Board's staff in Sacramento to discuss the application of sales or use tax to the cultured marble industry. Your letter restates the conclusions you believe were reached at the meeting and states certain questions that were left for further study. In the discussion below, the items listed as "letter" or "question" are paraphrases from your letter and are followed by our "comment" or "answer."

Letter: "...sales tax would be applicable to all products sold by the cultured marble manufacturer. The exceptions to this would be sales of cultured marble products to distributors or contractors who hold a valid resale permit, and products which are sold on an installed lump sum contract basis."

Comment: It is not enough that the distributor or contractor "hold" a valid seller's permit. You must distinguish between a seller's permit and a resale certificate. We are enclosing a copy of Regulation 1660 on "Resale Certificates." In order for the sale to the distributor or contractor to be nontaxable, the seller must obtain and retain a properly filled out resale certificate. The distributor or contractor holding a permit or giving the seller his permit number or a copy of the permit will not suffice.

The resale certificate, or document such as a letter or purchase order containing all of the essential elements stated in Regulation 1668(b), is absolutely necessary to completely relieve the seller of the tax liability. Of course, the resale certificate or equivalent document must be taken in good faith. If the purchaser is buying both materials and fixtures, as defined in Regulation 1521, the resale certificate should state that the buyer is engaged in the business of selling cultured marble materials and fixtures.

Installed lump sum contracts are not entirely an exception to the general rule that all sales are subject to tax. Installed "fixtures" are considered sold by the installing contractor and he owes sales tax on the selling price (more of this below).

Letter: In the case of sales to distributors or contractors, it was agreed that sales tax would not need to be collected if the marble manufacturer had reasonable assurances that either of these two resale channels had a valid resale certificate and that a copy of the resale certificate be made available to them. In this event it would be the responsibility of the distributor or the contractor to apply the sales tax at their point of sale.

Comment: Reasonable assurance will not do. As stated above, the manufacture must obtain a properly filled out resale certificate from the distributor or contractor.

Letter: In lump sum installed contracts, products recognized as fixtures are taxed upon what the fixtures would normally sell for in similar quantity and similar style to the same classification of trade on a non-installed basis.

Comment: In lump sum contracts, the installing contractor owes sales tax on the selling price of the fixtures which he furnishes and installs. He may not accept resale certificates for the fixtures he installs from prime contractors. If he has purchased the fixture in a completed condition, the price he paid for the fixture is the amount on which he owes tax. If he manufactured the fixture, he owes tax on the price at which he sells similar fixtures in similar quantities ready for installation to other contractors. If he does not sell the fixtures he manufactures to other contractors, then the amount stated in price lists, bid sheets, or other records will be the amount on which he owes tax. If neither of the above methods applies, then he must compute his selling price using the six factors stated in Regulation 1521(b)(2)(B)(2)(b).

Letter: ~~A one piece vanity top, including the bowl molded into and an integral part of that vanity top, is a fixture. *~~

Comment: ~~We agree.~~

*This rule was changed per Board decision & D&R dated 6/10/85.
SPJ 8/17/01

Letter: ~~Bathtubs made of cultured marble are classified as fixtures. *~~

Comment: ~~We agree.~~

*This rule was changed per Board decision & D&R dated 6/10/85.
SPJ 8/17/01

Letter: Wall panels surrounding the bathtub are classified as materials.

Comment: We agree.

Letter: Decorative items such as tub skirt, soap dishes, toothbrush holders, and other such items commonly known as accessories, are classified as materials.

Comment: We agree.

Letter: Shower stalls, including the shower pan and the wall panels, are materials.

Comment: We agree.

Letter: An exception would be a cultured marble shower stall constructed as a one-piece unit similar to an integral fiberglass unit. These are classified as fixtures.

Comment: We agree.

Letter: The differentiation between fixtures and materials is in the application of the sales tax related to either sale price or cost of raw materials. The sales tax is applicable based on the sale price of a fixture. In the case of materials, the tax is based upon only the raw materials which went into the manufacture of making the materials, excluding all labor and overhead cost.

Comment: We are in general agreement. The technical differentiation between “fixtures” and “materials,” within Regulation 1521, is that the installing contractor is the retailer of fixtures, while he is the consumer of materials. The amount to which sales tax applies on his sale of fixtures has been laid out above at some length. He owes tax on the cost of materials which he consumes. If he does not pay tax reimbursement to the vendor from whom he purchases the raw materials, then he reports the price he has paid for them on line 2 of his tax return. He does not report or pay tax on the labor or overhead that he expends on further fabricating materials.

Letter: Vanity tops without a bowl are materials.

Comment: We agree.

Question: Is the vanity top without a bowl that has a bowl added to it at the jobsite prior to being installed on top of a cabinet a fixture or materials.

Answer: A fixture, since Regulation 1521 provides that jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

Question: Is a vanity top that is installed without a bowl and placed on a cabinet with a bowl added after the installation of the vanity top a fixture or material.

Answer: The vanity top is a material. The bowl is a fixture.

Question: Is a bowl that was attached to a vanity top (not molded as an integral part) at the factory and subsequently installed at the jobsite a fixture or a material.

Answer: A fixture, i.e., the unit (top plus bowl) is a fixture.

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Question: Is a vanity top without a bowl, but with a cut-out area, which is installed into the cabinet at the jobsite and subsequently has a “drop-in” type bowl installed in it a fixture or a material.

Answer: The vanity top is a material; the bowl dropped-in later is a fixture.

In all four of the above questions we assume that the cabinet is attached (affixed) to the real property before the top is added. The rule then becomes that a top without a bowl is a materials; a top and a bowl unit is a fixture.

We hope the above analysis will be of help to the cultured marble industry in applying the Sales and Use Tax Law to its activities.

Sincerely,

Donald J. Hennessy
Tax Counsel

DJH:po

Enclosure

bc: Covina – Dist. Admin.

R. Nunes
D. F. Brady
M. H. Howard.

M e m o r a n d u m

190.0170

To: Annotation File

Date: March 23, 1982

From: Donald J. Hennessy

Subject: Annotation 190.0170

Pursuant to a decision by the Board on June 30, 1982, rule No. 7 in annotation 190.0170 shall be changed to read:

7. A bathtub is a material

D. J. Hennessy

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

190.0170

In the Matter of the Petition)	
for Redetermination of State)	DECISION AND RECOMMENDATION
and Local Sales and Use Tax;)	
)	
B--- S---; dba)	
B--- S--)	No. SR -- XX-XXXXXXX-010
NORTH COUNTY ---)	
)	
<u>Petitioner</u>)	

The above-entitled matter came on regularly for hearing on Friday, April 26, 1985 in --- ---, California before Robert H. Anderson.

Appearing for Petitioner:

Mr. C. R. G---
Tax Consultant

Mr. B--- S---
Owner

Appearing for the Board:

Ms. Mary O'Brien
Auditor
--- --- District

Protest

Petitioner was audited for the period from 7-1-80 through 6-30-83, and a determination for tax and interest was issued on February 28, 1984.

Petitioner protests the assessment for tax representing the difference between a reported measure of tax on materials consumed and an audited measure of tax on fixtures sold.

The measure of tax pursuant to the original audit is \$66,138.

On 6-19-84 there was a reaudit that superseded the original audit which is not reflected in the determination issued on 2-28-84. The reaudit resulted in reducing the protested item by \$-20,736. Thus, the measure of tax on the protested item is \$45,402.

Contentions

One piece vanity cultured marble tops with molded bowls should be classified as materials rather than fixtures; this would be consistent with the 1982 classification of cultured marble bathtub shells in Tax Counsel Opinion 190.0170.

Summary

Mr. S--- operates a sole proprietorship business consisting of retailing and wholesaling of cultured marble products, formica and corian. The cultured marble products are manufactured by petitioner, and generally include plain vanity tops, vanity tops with a hole or holes to accommodate drop-in type basins, vanity tops with molded bowls, and bathtub shells. In addition, petitioner also contracts to furnish and install the kinds of products that he sells.

The audit under consideration in this matter is the first of petitioner by the Board of Equalization even though the record shows a business starting date of May, 1956.

Mr. S--- stated that when he first started manufacturing cultured marble vanity tops he telephoned someone at the Board to inquire about how he should classify the tops he manufactured and installed; he said that he was advised that they were materials.

This controversy is over the classification of vanity tops made of cultured marble that sometimes have one or two molded basins or bowls as an integral and inseparable part of the whole vanity top. See Exhibits 2 and 7.

Heretofore, the cabinet top has been classified as materials. Generally, it is installed as a top of a cabinet which may or may not be a fixture depending on the extent of prefabrication of the cabinet. At this point we note that where cabinets are concerned, they are not considered complete (as fixtures) unless at least 90 percent of the total direct cost of labor and materials in fabricating and installing the cabinet is incurred prior to affixation to the realty. (See Regulation 1521.)

Cultured marble tops without a hole to accommodate a drop-in type basin and tops with a hole or holes to accommodate drop-in type basins are classified as materials. (See Exhibits 1, 3, and 4). However, where the top has a molded basin or basins as an integral part of the top it has been classified as a fixture, at least since 7-5-79, because of the basin, even though it also serves as a top for the cabinet on which it is affixed and becomes a part.

Petitioner believes that this classification is inconsistent with how the Board has classified cultured marble bathtub shells (see Exhibits 5, 6, and 7) which have been classified as materials since 1982.

Petitioner points out that material cost and labor cost are relative regardless of the bathtub size. And, the jobsite installation cost is about 28% of the fabricated material-labor cost of the tops.

By comparison, the material cost and labor cost are also relative regardless of the size of the vanity cultured marble tops. And, the jobsite installation cost is about 26% of the fabricated material-labor cost of the tops.

It is contended that the material-labor requirements, in Regulation 1521, before a cabinet qualifies as a fixture, are not met in marbelized bathtub shells or in marbelized vanity tops having molded basins. Thus, the vanity tops having molded basins should be classified as materials rather than fixtures.

In the way of background, Annotation 190.0170 was originally included in Business Taxes Law Guide on July 5, 1979; it was the result of a meeting with some members of the Board staff and some representatives of the cultured marble industry. Originally, cultured marble tub shells were classified as "fixtures" in the opinion.

In 1980-81 there was an audit of a business that furnished and installed cultured marble bathtub shells. The audit resulted in an assessment for tax on sales of the tub shells because the auditor treated them as fixtures in accordance with Annotation 190.0170.

The taxpayer petitioned for redetermination and a hearing was held. The hearing officer went along with the auditor's classification of the tub shells as fixtures.

The taxpayer-petitioner appealed the hearing officer's recommendation, and presented arguments to the Board that the bathtub shells should be classified as materials because: (1) installation labor was much more than merely affixing or fastening the bathtub shells to the realty; (2) the shells cannot be readily removed without being destroyed or without substantial destruction to the realty (the space) where it was installed; and (3) the tub shell is not similar to other plumbing fixtures such as drop-in wash basins, toilets, etc. that can be removed and reused without any additional fabrication.

The Board, at its June 30, 1982 meeting, held that the cultured marble bathtub shells should be classified as materials. Accordingly, Tax Counsel Opinion 190.0170 was amended and redated. Also, the Board action was announced in Current Legal Digest (CLD) #442 dated 8-23-82.

Conclusions

Vanity cultured marble tops with molded basins which serve also as tops for cabinets are, like cultured marble bathtub shells, not readily removable without destruction to the walls and cabinets to which they are affixed permanently. The molded basins, unlike the drop-in types, cannot be reused without additional fabrication to the top portion so that it will fit a new area and different cabinet.

Much of the same reasoning for holding that the cultured marble bathtub shells are materials is applicable to the vanity cultured marble tops with molded basins. If anything, the bathtub shell appears to be close to a fixture than the vanity cabinet top with a molded basin.

Finally, the cabinet-fixture standard test or rule (the ration between prefabrication costs of materials and labor to installation costs of materials and labor) should logically apply to classifying the vanity cultured marble tops with molded basins. The furnishing and installation of the tops is done under construction contracts as is the cabinets.

Recommendation

Redetermine. Reaudit and adjust by classifying the vanity cultured marble tops with molded basin(s) as materials.

Adjustment to be made by Petition Unit.

Robert H. Anderson, Hearing Officer

June 10, 1985

Date

Memorandum

190.0170

To: Mr. Donald J. Hennessy

Date: December 11, 1985

From: Gary J. Jugum

Subject: Business Taxes Law Guide Annotation 190.0170

Attached please find the hearing report of Mr. Robert H. Anderson in the matter of B--- S---, dba B--- S--- Co., SR -- XX-XXXXXX-010, dated June 10, 1985.

The conclusion reached by Mr. Anderson is contrary to Annotation 190.0170. However, everyone agrees that the hearing report is correct, in light of recent decisions made by the Board on related classification questions. The Annotation should be revised to comply with the hearing report. The change in classification would, of course, have retroactive effect.

GJJ:sr

Attach.

cc: Mr. W. D. Dunn
Mr. Robert H. Anderson